

reporting, promulgated new rules for retiree health accounting, referred to as Financial Accounting Standards Number 106 or FAS 106. FAS 106 requires employers to apportion the costs of retiree health over the working lifetime of employees and to report unfunded retiree health benefit liabilities in accordance with generally accepted accounting principles beginning with fiscal years after December 15, 1992. Because "the recognition of these liabilities in financial statements dramatically impacts a company's calculation of its profits and losses,"¹⁴ some companies have said that FAS 106 led to reductions in reported income, thus creating an incentive to reduce expenditures for employee benefits such as retiree health.

The Incentive for Employers To Reduce Health Care Costs

As a result of these increased costs and accounting changes, employers have actively examined ways to reduce health care costs, including by reducing, altering or eliminating retiree health coverage.¹⁵ During hearings before the U.S. House of Representative's Committee on Education and the Workforce in November 2001, the GAO's Director of Health Care Services testified that only "one-third of large employers and less than 10% of small employers offer retiree health benefits."¹⁶ The 2001 Mercer/Foster Higgins study shows that the number of employers with 500 or more workers who offer retiree health coverage decreased by 17 percent between 1993 and 2001 for both pre- and post-Medicare eligible retirees.¹⁷ The 2002 Kaiser/HRET survey similarly found that a declining percentage of large companies (those with at least 200 employees) offer retiree health benefits; only 34 percent of such employers

offered retiree health coverage in 2002, compared to 66 percent of similar companies in 1988.¹⁸ Another survey completed by Hewitt Associates LLC estimates a 15 percent decline in the number of large employers providing pre-age 65 retiree health coverage between 1991 and 2000 and an 18 percent decrease in the number of large employers providing health benefits to retirees age 65 or older during the same period.¹⁹ The 2002 Kaiser/Hewitt retiree health study concluded that this trend will continue, with one in five large employers likely to eliminate retiree health coverage for future retirees within the next three years.²⁰

Of those employers offering retiree health benefits, most are more likely to offer such benefits to early retirees and not to Medicare-eligible retirees. A report issued by Kaiser, HRET and The Commonwealth Fund (Kaiser/HRET/Commonwealth) estimates that only 23% of employers with at least 200 workers offered retiree health benefits to Medicare-age retirees in 2001. This is a decline of more than 10 percentage points in a three-year period.²¹

As the number of employers offering retiree health coverage declines, so has the incentive to provide future retirees with such coverage. Unions report that meaningful negotiations about the future provision of employer-sponsored retiree health benefits are becoming

increasingly futile. Union representatives have informed EEOC that increasing numbers of employers have refused to include retiree health among the benefits to be provided to employees. A significant number of employers have agreed to provide retiree health only if the benefit terminates when the retiree becomes eligible for Medicare.

Alternatives to employer-sponsored retiree health coverage are costly, offer fewer benefits, and may be limited in availability, particularly for retirees not yet eligible for Medicare.²² Under provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 29 U.S.C. 1161 *et seq.* (COBRA), retirees under the age of 65 may be eligible for temporary health coverage from either their spouse's employer or their former employer, although the retiree may be required to pay the entire premium. Other retirees under age 65 must obtain coverage in the private individual insurance market, which often is prohibitively expensive or provides limited benefits.²³ Those unable to afford coverage in the private insurance market rely on public insurance, pay for health care out of pocket, or are uninsured. Retirees age 65 or older often rely on Medicare as their primary source of health coverage. Nonetheless, many retirees in this age group rely on employer-sponsored benefits to cover Medicare's cost-sharing requirements or gaps in Medicare coverage. Retirees who do not have access to employer-sponsored supplemental coverage must obtain private individual "Medicare supplement" insurance, which can be prohibitively expensive, particularly if prescription drug coverage is desired.²⁴ For these reasons, employer-sponsored retiree health coverage is a valuable benefit for older persons that should be protected and preserved to the greatest extent possible.

¹⁴ Paul Fronstin, "Retiree Health Benefits: Trends and Outlook," EBRI Issue Brief No. 236, at 3 (Employee Benefit Research Institute Aug. 2001).

¹⁵ A survey by THAP!, Andersen and CalPERS found that both public and private employers considered controlling health care costs as a top business issue for the next two to three years. THAP! *et al.*, "Productive Workforce Survey: Report of Findings Private Employer/Public Agency" (THAP!, Andersen and CalPERS Aug. 2001); *see also* Anna M. Rappaport, "Postemployment Benefits: Retiree Health Challenges and Trends—2001 and Beyond," in *Compensation and Benefits Management*, 52, 56 (Autumn 2001) ("Companies seeking to reduce costs are closely examining retiree medical benefits.").

¹⁶ Hearing Before the House Comm. on Education and the Workforce, 107th Cong. (2001) (statement of William J. Scanlon, Director of Health Care Services, GAO).

¹⁷ William M. Mercer, "Mercer/Foster Higgins National Survey of Employer-Sponsored Health Plans 2001" (New York, NY: William M. Mercer, Inc. 2002).

¹⁸ The Henry J. Kaiser Family Foundation & Health Research and Educational Trust, "Employer Health Benefits, 2002 Annual Survey" (Menlo Park, CA: The Henry J. Kaiser Family Foundation and Health Research and Educational Trust 2002).

¹⁹ Hewitt Associates LLC, "Trends in Retiree Health Plans" (Lincolnshire, IL: Hewitt Associates LLC 2001). This conclusion is based on information from Hewitt Associates database of 1,020 large employers, including 85% of Fortune 100 companies and 57% of Fortune 500 companies.

²⁰ The Henry J. Kaiser Family Foundation & Hewitt Associates LLC, "Kaiser/Hewitt 2002 Retiree Health Survey" (Menlo Park, CA: The Henry J. Kaiser Family Foundation and Hewitt Associates LLC 2002); *see also* The Henry J. Kaiser Family Foundation & Health Research and Educational Trust, "Employer Health Benefits, 2002 Annual Survey" (Menlo Park, CA: The Henry J. Kaiser Family Foundation and Health Research and Educational Trust 2002) (11% of large employers predict they will eliminate retiree health benefits for future retirees).

²¹ The Henry J. Kaiser Family Foundation *et al.*, "Erosion of Private Health Insurance Coverage For Retirees: Findings from the 2000 and 2001 Retiree Health and Prescription Drug Coverage Survey" (Menlo Park, CA: The Henry J. Kaiser Family Foundation, Health Research and Educational Trust, and The Commonwealth Fund 2002); *see also* The Henry J. Kaiser Family Foundation & Health Research and Educational Trust, "Employer Health Benefits, 2002 Annual Survey" (Menlo Park, CA: The Henry J. Kaiser Family Foundation and Health Research and Educational Trust 2002) (96% of employers with at least 200 employees offer health benefits to pre-age 65 retirees, while only 72% of large employers offer health benefits to retirees age 65 and above).

²² U.S. General Accounting Office, "Retiree Health Benefits: Employer-Sponsored Benefits May Be Vulnerable to Further Erosion," GAO Doc. No. GAO-01-374, at 20-24 (May 2001).

²³ U.S. General Accounting Office, "Retiree Health Benefits: Employer-Sponsored Benefits May Be Vulnerable to Further Erosion," GAO Doc. No. GAO-01-374, at 20-22 (May 2001).

²⁴ U.S. General Accounting Office, "Retiree Health Benefits: Employer-Sponsored Benefits May Be Vulnerable to Further Erosion," GAO Doc. No. GAO-01-374, at 22-24 (May 2001). GAO estimates that Medigap coverage costs an average of \$1,300 per year. Hearing Before the House Comm. on Education and the Workforce, 107th Cong. (2001) (statement of William J. Scanlon, Director of Health Care Services, GAO).